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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. PT-2011-707

13 **MONIQUE TABERA**
14 **1732 West Glen Avenue, Apt. 11**
15 **Anaheim, CA 92801**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Psychiatric Technician License No. PT 31583

Respondent.

16
17 **FINDINGS OF FACT**

18 1. On November 5, 2012, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in
19 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
20 Technicians, Department of Consumer Affairs, filed Accusation No. PT-2011-707 against
21 Monique Tabera (Respondent) before the Board of Vocational Nursing and Psychiatric
22 Technicians. (Accusation attached as Exhibit A.)

23 2. On February 6, 2003, the Board of Vocational Nursing and Psychiatric
24 Technicians (Board) issued Psychiatric Technician License No. PT 31583 to Respondent. The
25 Psychiatric Technician License expired on February 29, 2012, and has not been renewed.

26 3. On November 5, 2012, Respondent was served by Certified and First Class Mail
27 copies of Accusation No. PT-2011-707, Statement to Respondent, Notice of Defense, Request
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 (Code) section 136, is required to be reported and maintained with the Board. Respondent's
3 address of record was and is 1732 West Glen Avenue, Apt. 11, Anaheim, CA 92801.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and Code section 124.

6 5. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the
8 respondent files a notice of defense, and the notice shall be deemed a specific
9 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon
11 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
12 No. PT-2011-707.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at
15 the hearing, the agency may take action based upon the respondent's express
16 admissions or upon other evidence and affidavits may be used as evidence
without any notice to respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing and, based on the
19 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on
21 file at the Board's offices regarding the allegations contained in Accusation No. PT-2011-707,
22 finds that the charges and allegations in Accusation No. PT-2011-707, are separately and
23 severally, found to be true and correct by clear and convincing evidence.

24 9. Taking official notice of its own internal records, pursuant to Business and
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for
26 Investigation and Enforcement is \$1,262.50 as of December 10, 2012.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Monique Tabera has subjected her Psychiatric Technician License No. PT 31583 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke Respondent's Psychiatric Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent is subject to disciplinary action under Code sections 490 and 4521, subdivision (f) in that on October 4, 2006, in a criminal proceeding entitled *The People of the State of California v. Monique Ann Tabera, aka Monique Ann Bingamon, aka Monique A Tabera* in Orange County Superior Court, North Justice Center, case number 06NM10160, she was convicted on her plea of guilty for violation of VC section 23152, subdivision (a), driving under the influence (DUI) of alcohol or drugs, and subdivision (b), driving while having a blood alcohol content (BAC) of .08 percent or more, misdemeanors that are substantially related to the qualifications, functions, and duties of a licensed psychiatric technician.

b. Respondent is subject to disciplinary action under Code sections 490 and 4521, subdivision (f) in that on August 4, 2011, in a criminal proceeding entitled *The People of the State of California v. Monique Ann Tabera, aka Monique Ann Bingamon, aka Monique A Tabera*, in Orange County Superior Court, North Justice Center, case number 11NM13627, she was convicted on her plea of guilty of violating Penal Code (PC) sections 273a, subdivision (b), child abuse and endangerment, a misdemeanor that is substantially related to the qualifications, functions, and duties of a licensed psychiatric technician.

ORDER

IT IS SO ORDERED that Psychiatric Technician License No. PT 31583, heretofore issued to Respondent Monique Tabera, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on MAY 19 2013.

4 It is so ORDERED APR 19 2013

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6
7 FOR THE BOARD OF VOCATIONAL NURSING
8 AND PSYCHIATRIC TECHNICIANS
9 DEPARTMENT OF CONSUMER AFFAIRS

10 70656726.DOC
11 DOJ Matter ID:SD2012703549

12 Attachment:
13 Exhibit A: Accusation
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Exhibit A

Accusation

FILED

NOV 05 2012

Board of Vocational Nursing
and Psychiatric Technicians

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9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. PT-2011-707

13 **MONIQUE TABERA**
1732 West Glen Avenue, Apt. 11
14 Anaheim, CA 92801

A C C U S A T I O N

15 **Psychiatric Technician License No. PT 31583**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about February 6, 2003, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Psychiatric Technician License Number PT 31583 to Monique Tabera
25 (Respondent). The Psychiatric Technician License expired on February 29, 2012, and has not
26 been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118 (b) of the Code states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 4520 of the Code provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 4521 of the Code states, in pertinent part:

The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

1 (a) Unprofessional conduct, which includes but is not limited to any of the
2 following:

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4 (f) Conviction of any offense substantially related to the qualifications,
5 functions, and duties of a psychiatric technician, in which event the record of the
6 conviction shall be conclusive evidence of the conviction. The board may
7 inquire into the circumstances surrounding the commission of the crime in order
8 to fix the degree of discipline.

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10 REGULATORY PROVISIONS

11 9. California Code of Regulations, title 16, section 2578 states:

12 For the purposes of denial, suspension, or revocation of a license pursuant
13 to Division 1.5 (commencing with Section 475) of the Business and Professions
14 Code, a crime or act shall be considered to be substantially related to the
15 qualifications, functions or duties of a licensed psychiatric technician if to a
16 substantial degree it evidences present or potential unfitness of a licensed
17 psychiatric technician to perform the functions authorized by his license in a
18 manner consistent with the public health, safety, or welfare. Such crimes or acts
19 shall include but not be limited to those involving the following:

20 (a) Procuring a license by fraud, misrepresentation, or mistake.

21 (b) A conviction of practicing medicine without a license in violation of
22 Chapter 5 of Division 2 of the Business and Professions Code.

23 (c) Violating or attempting to violate, directly or indirectly, or assisting in
24 or abetting the violation of, or conspiring to violate any provision or term of
25 Chapter 10, Division 2 of the Business and Professions Code.

26 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
27 whether a licensed physician or not, in the performance of or arranging for a
28 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing
of "narcotics or dangerous drugs or dangerous devices" as defined in Section
4022 of the Business and Professions Code.

10. California Code of Regulations, title 16, section 2579 states:

When considering a) the denial of a license under Section 480 of the
Business and Professions Code, b) the suspension or revocation of a license on the
ground that a licensee has been convicted of a crime, or c) a petition for

1 reinstatement of a license under Section 4524 of the Business and Professions
2 Code, the Board, in evaluating the rehabilitation of an individual and his or her
present eligibility for a license, will consider the following criteria:

- 3 (1) Nature and severity of the act(s), offense(s), or crime(s) under
4 consideration.
- 5 (2) Actual or potential harm to the public.
- 6 (3) Actual or potential harm to any patient.
- 7 (4) Overall disciplinary record.
- 8 (5) Overall criminal actions taken by any federal, state or local agency or
9 court.
- 10 (6) Prior warnings on record or prior remediation.
- 11 (7) Number and/or variety of current violations.
- 12 (8) Mitigation evidence.
- 13 (9) In case of a criminal conviction, compliance with terms of sentence
14 and/or court-ordered probation.
- 15 (10) Time passed since the act(s) or offense(s) occurred.
- 16 (11) If applicable, evidence of proceedings to dismiss a conviction
pursuant to Penal Code section 1203.4.
- 17 (12) Cooperation with the Board and other law enforcement or regulatory
agencies.
- 18 (13) Other rehabilitation evidence.

19 COST RECOVERY

20 11. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
21 administrative law judge to direct a licensee found to have committed a violation or violations
22 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FIRST CAUSE FOR DISCIPLINE

25 (October 4, 2006 Criminal Conviction for DUI and Driving While Having a BAC of .08
26 Percent or More on August 7, 2006)

27 12. Respondent is subject to disciplinary action under Code sections 490 and 4521,
28 subdivision (f) in that she was convicted of crimes that are substantially related to the
qualifications, functions, and duties of a licensed psychiatric technician. The circumstances are
as follows:

1 a. On or about October 4, 2006, in a criminal proceeding entitled *The People*
2 *of the State of California v. Monique Ann Tabera, aka Monique Ann Bingamon, aka Monique A*
3 *Tabera* in Orange County Superior Court, North Justice Center, case number 06NM10160,
4 Respondent was convicted on her plea of guilty for violation of VC section 23152, subdivision
5 (a), driving under the influence (DUI) of alcohol or drugs, and subdivision (b), driving while
6 having a blood alcohol content (BAC) of .08 percent or more, misdemeanors.

7 b. As a result of the conviction, on or about October 4, 2006, Respondent
8 was sentenced to informal probation for three years and ordered to pay fines, fees, and
9 restitution. Respondent was also ordered to attend and complete a three-month, level 1, first
10 offender alcohol program and a Mothers Against Drunk Driving (MADD) Victim's Impact
11 Panel.

12 c. The facts that led to the conviction are that in or about the early morning
13 of May 21, 2006, Respondent was involved in a traffic collision on Valley View Street, Buena
14 Park, California. While speaking with a California Highway Patrol (CHP) Officer, Respondent
15 was unsteady on her feet. The Officer also noticed Respondent's bloodshot watery eyes, slow
16 and slurred speech, and breath emitting a moderate odor of alcohol. When asked if Respondent
17 drank any alcoholic beverages prior to driving, she admitted to having a couple of beers.
18 Respondent failed to perform the subsequent series of field sobriety tests (FSTs). During the
19 preliminary alcohol screen (PAS), Respondent registered .145 and .134 percent BAC. At the
20 Orange County Jail, Respondent requested a blood test, which registered .11 percent BAC.

21 SECOND CAUSE FOR DISCIPLINE

22 (Aug. 4, 2011 Criminal Conviction for Child Abuse and Endangerment on May 12, 2011)

23 13. Respondent is subject to disciplinary action under Code sections 490 and 4521,
24 subdivision (f) in that she was convicted of a crime that is substantially related to the
25 qualifications, functions, and duties of a licensed psychiatric technician. The circumstances are
26 as follows:

27 a. On or about August 4, 2011, in a criminal proceeding entitled *The People*
28 *of the State of California v. Monique Ann Tabera, aka Monique Ann Bingamon, aka Monique A*

1 *Tabera*, in Orange County Superior Court, North Justice Center, case number 11NM13627,
2 Respondent was convicted on her plea of guilty of violating Penal Code (PC) sections 273a,
3 subdivision (b), child abuse and endangerment, a misdemeanor.

4 b. As a result of the conviction, on or about August 4, 2011, Respondent was
5 sentenced to four years informal probation and ordered to serve three days in the Orange County
6 Jail, with credit for three days served. Respondent was also ordered to pay fines, fees, and
7 penalties. Respondent was also ordered to attend and complete a one year domestic violence
8 child abuser's treatment program and render eight hours of community service. Respondent was
9 further ordered not to have any contact with her son except as permitted by social services.

10 c. The facts that led to the conviction are that in the evening on or about May
11 12, 2011, a witness reported Respondent for child abuse in the City of Anaheim, California. Two
12 other witnesses saw Respondent yelling at her three-year old son and one called the Anaheim
13 Police Department (APD). The three concerned witnesses followed Respondent and her son until
14 APD Officers contacted them. When contacted by Officers, Respondent claimed to have only
15 raised her voice because her son did not want to leave the park and go home. When asked about
16 her typical mode of discipline, Respondent admitted to using time-outs at home and to striking
17 her son over clothing on the buttocks with an open hand and without leaving marks. The APD
18 Officer observed what appeared to be a recent injury on Respondent's son's right cheek, which
19 had a small amount of dried blood and several small scratches that were red and raised. When
20 asked to explain how her son got injured, Respondent said that she did not know. The APD
21 Officer also smelled alcohol coming from Respondent's breath and person. When asked if she
22 had been drinking and if she felt it was responsible of her to be drinking while watching her son,
23 Respondent admitted to drinking beer at the park while watching her son and added, "I think it
24 was pretty responsible to walk to the park to get drunk then walk home."

25 DISCIPLINARY CONSIDERATION

26 14. To determine the degree of discipline, to be imposed on Respondent, Complainant
27 alleges that on or about November 20, 2006, in a criminal proceeding entitled *The People of the*
28 *State of California v. Monique Ann Tabera, aka Monique Ann Bingamon, aka Monique A Tabera*

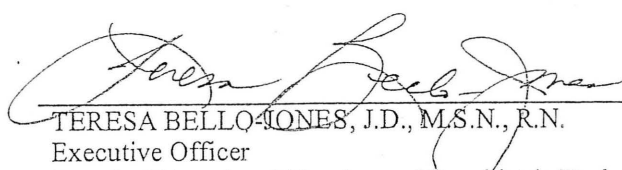
1 in Orange County Superior Court, West Justice Center, case number 06WM09077, Respondent
2 was convicted on her plea of guilty of violating Vehicle Code (VC) section 12500, subdivision
3 (a), driving without a valid driver's license, a misdemeanor. Charges for violation of VC section
4 14601.1, subdivision (a), driving on suspended license, a misdemeanor, were dismissed pursuant
5 to a plea bargain. As a result of the conviction, on or about November 20, 2006, Respondent was
6 ordered to pay a fine.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
10 Technicians issue a decision:

- 11 1. Revoking or suspending Psychiatric Technician license Number PT 31583, issued
12 to Monique Tabera;
 - 13 2. Ordering Monique Tabera to pay the Board of Vocational Nursing and Psychiatric
14 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
15 Business and Professions Code section 125.3;
 - 16 3. Taking such other and further action as deemed necessary and proper.
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20 DATED: NOV 05 2012


TERESA BELLO-TONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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